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TRANSCRIPT OF PROCEEDINGS

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

NOV 18 1993

IN THE MATTER OF: PR DOCKET NO. 93-231

CAPITOL RADIOTELEPHONE COMPANY, INC.  
(a/k/a CAPITOL RADIOTELEPHONE, INC. or  
CAPITAL RADIO TELEPHONE, INC.)  
d/b/a CAPITAL PAGING AND RAM TECHNOLOGIES, INC.  
Charleston, West Virginia

DATE OF CONFERENCE: October 29, 1993 VOLUME: 1  
PLACE OF CONFERENCE: Washington, D. C. PAGES: 1-39

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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Application of:

PR Docket No.  
93-231

CAPITOL RADIOTELEPHONE COMPANY, INC.  
For a Private Carrier Paging Facility  
on the Frequency 152.480 MHz in  
Huntington/Charleston, West Virginia;

Imposition of Forfeiture Against:

CAPITOL RADIOTELEPHONE, INC.  
Former Licensee of Station WNSX-646 in  
the Private Land Mobile Radio Services

Revocation of Licenses of:

CAPITOL RADIO TELEPHONE, INC.  
Licensee of Stations WNDA-400 and WNWW-636  
in the Private Land Mobile Radio Services

CAPITOL RADIOTELEPHONE, INC.  
Licensee of Stations KWU-373, KUS-223,  
KQD-614 and KWU-204 in the Public Mobile  
Radio Service

The above-entitled matter came on for prehearing  
conference pursuant to Notice before Judge Joseph Chachkin,  
Administrative Law Judge, at 2000 L Street, N.W., Washington,  
D.C., 20554, in Courtroom No. 3, on Friday, October 29, 1993,  
at 9:05 a.m.

APPEARANCES:

On behalf of Capitol Paging:

KENNETH E. HARDMAN, Esquire  
Kenneth E. Hardman, P.C.  
1255 23rd Street, N.W., Suite 830  
Washington, D.C. 20037-1170

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1 On behalf of RAM Technologies, Inc.:

2       FREDERICK M. JOYCE, Esquire  
3       CHRISTINE McLAUGHLIN, Esquire  
4       Joyce and Jacobs  
5       2300 M Street, N.W., Suite 130  
6       Washington, D.C. 20037

7 On behalf of FCC Private Radio Bureau:

8       JOHN J. BORKOWSKI, Esquire  
9       Compliance Branch  
10       Land Mobile & Microwave Division  
11       Washington, D.C. 20554

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25	Conference Began: 9:05 a.m.      Hearing Ended: 10:00 a.m.	

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## P R O C E E D I N G S

(9:05 a.m.)

JUDGE CHACHKIN: This proceeding concerns the following matters:

The Application of Capitol Radiotelephone, Inc., for a Private Carrier Paging Facility on the Frequency 152.480 MHz in Huntington/Charleston, West Virginia,

The Imposition of a Forfeiture against Capitol Radiotelephone, Inc., involving -- which was, was the former Licensee of Station WNSX-646 in the Private Land Mobile Radio Services,

The Revocation of the License of Capitol Radio Telephone, Inc., the Licensee of Station WNDA-400 in the Private Land Mobile Radio Services,

The Revocation of the License of Capitol Radio Telephone, Inc., the Licensee of Station WNWW-636 in the Private Land Mobile Radio Services,

The Revocation of the License of Capitol Radiotelephone Company, Inc., the Licensee of Station KWU-373 in the Public Mobile Radio Service,

The Revocation of the License of Capitol Radiotelephone Company, Inc., the Licensee of Station KUS-223 in the Public Mobile Radio Service,

The Revocation of the License of Capitol Radiotelephone, Inc. --telephone Company, Inc., the Licensee of Station KQD-614 in the Public Mobile Radio Service,

1                   And the Revocation of the License of Capitol  
2 Radiotelephone Company, Inc., the Licensee of Station KWU-204  
3 in the Public Mobile Radio Service.

4                   May I have the appearances on behalf of the Parties?  
5 On the -- on behalf of Capitol Radiotelephone, Inc.?

6                   MR. HARDMAN: Kenneth E. Hardman.

7                   JUDGE CHACHKIN: On behalf of Ram Technologies,  
8 Inc., who was permitted to intervene in this proceeding as  
9 specified in the Commission's Designation Order?

10                  MR. JOYCE: Frederick M. Joyce and Christine  
11 McLaughlin of Joyce and Jacobs.

12                  JUDGE CHACHKIN: And on behalf of the Chief for the  
13 Private Radio Bureau?

14                  MR. BORKOWSKI: Present is John Borkowski, and also  
15 having entered an appearance in this matter is W. Riley  
16 Hollingsworth.

17                  JUDGE CHACHKIN: All right. I just received yes-  
18 terday a copy of a Joint Motion for Approval of a Consent  
19 Agreement. As I indicated before I went on the record, the  
20 Joint Motion will not be granted and the Consent Agreement  
21 will be rejected.

22                  Gentlemen, you could have saved yourself a lot of  
23 time and effort had you bothered to read Section 1.93 of the  
24 Rules and also if you had done the least bit of research into  
25 case precedent. If you will notice, Section 1.93 specifically

1 says in its last sentence: "Consent orders may not be negoti-  
2 ated with respect to matters which involve a Party's basic  
3 statutory qualifications to hold a license."

4 I would call your attention to the Commission's  
5 Designation Order, which specifically includes an issue to  
6 determine in light of the findings -- I'm referring to para-  
7 graph -- subparagraph (j), in light of the findings under  
8 paragraphs (a) through (l) where the Capitol Radiotelephone,  
9 Inc., Capitol Radiotelephone, Inc., Capitol Radiotelephone,  
10 Company, Inc., and, and/or any of these entities doing busi-  
11 ness as Capitol Paging have the requisite basic character  
12 qualifications to continue to remain Commission licensees.

13 It also would have been useful, gentlemen, if you  
14 had bothered to spend maybe five minutes to look at Commission  
15 precedent, and I refer you specifically to Toltin Broadcasting  
16 Company, 66 FC 2d 974, which is a 1977 case, as well as ASD  
17 Answer Service, Inc., 56 RR 2d 1518, a 1984 case. Both are  
18 Commission cases where the Commission rejected consent orders  
19 holding that under Section 309 it was required to resolve  
20 outstanding character issues by making a public interest  
21 finding based on the record and the Commission's consent  
22 procedures cannot be used to resolve character questions.

23 There are character questions here, gentlemen, as  
24 I've just read to you. Therefore, a consent order cannot be  
25 granted and therefore we will have a hearing.

1 Do you have anything to say, Mr. Borkowski? Did you  
2 bother reading section which I just referred to you which  
3 specifically precludes consent decrees?

4 MR. BORKOWSKI: Yes, Your Honor. I would like to  
5 speak to this matter --

6 JUDGE CHACHKIN: Go ahead.

7 MR. BORKOWSKI: Your Honor, we did look into this  
8 matter into Section 1.93(b) and into the Toltin Broadcasting  
9 and into its progeny and specifically into, among other cases,  
10 the ASD Answering Service, Inc., case, and I would call your  
11 attention to several different areas. First, the Toltin  
12 Broadcasting and its progeny in our opinion do have a well-  
13 held area of exception where the Commission has held that the  
14 -- in instances where applications are pending but the licen-  
15 see is willing to ultimately surrender the license, the  
16 Commission will grant the license and allow the licensee to  
17 surrender it in instances where there is a substantial mone-  
18 tary penalty. I can cite Your Honor the three specific cases  
19 where such a holding has existed. ASD Answering Service is  
20 one of those at 1 FCC Record 753, page 754.

21 JUDGE CHACHKIN: What, what do you mean? I don't  
22 quite understand what you mean. We, we have issues here. We  
23 have more than one application. We have a number of licenses  
24 where revocation proceedings are involved. We have  
25 misrepresentation issues. We have lack of candor issues in



1 | this case. As I pointed out, basic character issues. Now,  
2 | could you cite me a case with the Commission where you had  
3 | basic character issues the Commission has allowed a consent  
4 | order?

5 |           MR. BORKOWSKI: I can cite you immediately to four  
6 | with respect to misrepresentation and lack of candor that I'd  
7 | be prepared to direct your attention to this morning, Your  
8 | Honor. In the Private Radio Bureau in the Matter of Air and  
9 | Ambulant Service, Inc., PR Docket No. 81-903, a consent agree-  
10 | ment was approved where issues of misrepresentation --

11 |           JUDGE CHACHKIN: Who, who approved this consent  
12 | decree? Who did?

13 |           MR. BORKOWSKI: This was before Judge --

14 |           JUDGE CHACHKIN: The Bureau?

15 |           MR. BORKOWSKI: -- Arig at the time.

16 |           JUDGE CHACHKIN: Judge Arig approved this?

17 |           MR. BORKOWSKI: Yes, Your Honor.

18 |           JUDGE CHACHKIN: Well, apparently, the Commission  
19 | didn't take it up, because the Commission in the cases that  
20 | they did take it up specifically said you couldn't grant it.

21 |           MR. BORKOWSKI: In an, in an instance where --

22 |           JUDGE CHACHKIN: Could you show me where the  
23 | Commission has ever approved it, Commission has ever said it's  
24 | all right? The fact that a judge might have done it doesn't  
25 | give it any authority. If it didn't reach the Commission, if

1 the Commission didn't consider it -- I cited you two cases  
2 involving the Commission itself. A judge erroneously may have  
3 ignored what the language of the Rule says, but I'm not pre-  
4 pared to do so. I have Commission precedent. If you could  
5 show me Commission precedent saying that under the facts here  
6 where there are basic character qualifications the Commission  
7 has allowed a consent order, I'm certainly prepared to listen  
8 to it.

9 MR. BORKOWSKI: Your Honor, the Commission has  
10 looked, as I was beginning to argue earlier, with respect to,  
11 to matters that involve basic character qualifications in  
12 each, each case, including misrepresentation and lack of  
13 candor. There have been three instances where notwithstanding  
14 Toltin Broadcasting's precedent the Commission has chosen to  
15 allow a settlement and to approve for a brief moment the grant  
16 of a license in order to transfer that license in such cases.  
17 Those cases include RKO, 67 RR 2d 504 (1990); ASD Answering  
18 Service, Inc., 1 FCC Record 753, at 754; and where this was  
19 discussed in George E. Cameron, Jr., Communications, 56 RR 2d  
20 825, at 828 (1984).

21 JUDGE CHACHKIN: Does the licensee propose to dis-  
22 pose of his licenses here?

23 MR. BORKOWSKI: The licensee in this case is willing  
24 to surrender the license that --

25 JUDGE CHACHKIN: That's not what I'm talking about.

1 That's not the only license involved here. There are about  
2 six or seven other licenses involved here. This is a question  
3 whether or not he -- whether or not Capitol should remain a  
4 licensee of the Commission.

5 MR. BORKOWSKI: Toltin Broadcasting was a renewal  
6 application case, Your Honor, and I would argue that the  
7 precedent involved in Toltin Broadcasting and its progeny  
8 applies specifically to application matters and not to matters  
9 of revocation or suspension.

10 But even so, if you were to get into the area of  
11 nonapplication matters, then there is a great deal of prece-  
12 dent for the proposition that a misrepresentation, lack of  
13 candor, or character qualification cases at less than the  
14 Commission level there have been a number of settlements of,  
15 of, of such cases including before yourself, Your Honor, in  
16 the Robert J. King case in PR Docket No. 86-8. Also, I would  
17 direct your attention to --

18 JUDGE CHACHKIN: What was the Robert J. King case?  
19 What was that?

20 MR. BORKOWSKI: That was a, a, a matter that in-  
21 volved the revocation of a license in the Amateur Radio  
22 Service and a Technician Class Amateur Radio Operator License.  
23 And in the Jerry Gastol matter where character qualification  
24 issues were involved where a licensee was an amateur licensee  
25 and an SMR Mobile Radio licensee and a licensee of other

1 | licenses in the Commission in PR Docket No. 89-304 was in a,  
2 | in a revocation and suspension hearing matter before, before  
3 | Judge Stirmer and a consent agreement was approved in that  
4 | matter.

5 |           Also, Your Honor, I would direct your attention to  
6 | a, a line of Cellular cases where settlements have been ap-  
7 | proved where there have been not general character qualifica-  
8 | tion issues designated for hearing, but misrepresentation and  
9 | lack of candor issues that have been designated for a hearing.  
10 | An example of one such case would be Christina Communications,  
11 | which was Common Carrier Docket 87-78 where ultimately a  
12 | settlement was approved notwithstanding misrepresentation and  
13 | lack of candor issues.

14 |           And if Your Honor would permit us to do more re-  
15 | search and brief this matter, perhaps I could even give you a,  
16 | a larger number of Cellular cases where that sort of a settle-  
17 | ment has occurred.

18 |           JUDGE CHACHKIN: What happened in the Cellular  
19 | cases? I don't understand you. But -- are you saying that  
20 | the -- as, as a result of the settlement the licensee retained  
21 | his licenses in any of these cases?

22 |           MR. BORKOWSKI: In, in Christina applications were  
23 | involved. There was a settlement partnership formed in, in  
24 | order to get a license and the authorization of the license  
25 | ultimately was approved notwithstanding the original

1 designation of misrepresentation and lack of candor issues,  
2 and I believe that this has happened in other Cellular cases  
3 as well.

4 JUDGE CHACHKIN: Well, what do you mean it was  
5 approved? Was there a hearing? What, what happened? Was  
6 there a --

7 MR. BORKOWSKI: I believe --

8 JUDGE CHACHKIN: -- summary resolution? What --

9 MR. BORKOWSKI: There --

10 JUDGE CHACHKIN: -- happened?

11 MR. BORKOWSKI: -- there, there was originally in CC  
12 Docket No. 87-78 an order designating the applications for  
13 hearing and then ultimately a, a hearing did not occur.

14 JUDGE CHACHKIN: Well, who approved it?

15 MR. BORKOWSKI: Your, Your Honor, that's the extent  
16 of the research I have right now. I'd have to go into great--  
17 greater detail and research to give more information, but I  
18 was prepared this morning, at least, to go into this much  
19 detail.

20 JUDGE CHACHKIN: Well, well, you're saying despite  
21 the clear language of Section 1.93?

22 MR. BORKOWSKI: There, there have been narrow but  
23 nonetheless recognized exceptions at various levels of the  
24 Commission to --

25 JUDGE CHACHKIN: Well, what, what --

1 MR. BORKOWSKI: -- the general rule of --

2 JUDGE CHACHKIN: -- what exception --

3 MR. BORKOWSKI: -- Toltin Broadcasting and 1.93(b).

4 JUDGE CHACHKIN: What exception could there be that  
5 -- where it says consent orders may not be negotiated with  
6 respect to matters which involve a party's basic statutory  
7 qualifications to hold a license? Now, this -- you're not  
8 going to deny that this case involves a party's basic statu-  
9 tory qualifications to hold a license, are you?

10 MR. BORKOWSKI: Your Honor, notwithstanding the  
11 express language of Section 1.93(b), I would, I would charac-  
12 terize one clearly defined exception to that rule and to the  
13 general principle of Toltin Broadcasting in the following  
14 manner. I would say that based upon RKO, ASD Answering  
15 Service, Inc., and George E. Cameron, Jr., Communications,  
16 where this issue is discussed --

17 JUDGE CHACHKIN: Well, let's, let's --

18 MR. BORKOWSKI: -- and, and, and --

19 JUDGE CHACHKIN: -- take each one of these cases.  
20 RKO, as I recall RKO, the licensee -- that was, that was, that  
21 was an exceptional situation in RKO. There was a hearing  
22 held, in the first place. There were findings of fact and  
23 there was an initial decision. Is that not right?

24 MR. BORKOWSKI: That is correct, Your Honor.

25 JUDGE CHACHKIN: Is there an initial decision in

1 | this case? Has there been a hearing held on the misrepresen-  
2 | tation issue?

3 | MR. BORKOWSKI: No, Your Honor.

4 | JUDGE CHACHKIN: So, what, what is the relevance of  
5 | citing the RKO where a hearing was in fact held and findings  
6 | were made and initial decision and the Commission decision.  
7 | Then the Commission decided to dispose of the cases in the  
8 | manner in which it did because of the extraordinary nature of  
9 | it. That's, that's not apropos here because we haven't held a  
10 | hearing.

11 | MR. BORKOWSKI: Well, Your Honor, I --

12 | JUDGE CHACHKIN: There's been no resolution and, as  
13 | I read your consent order, the licensee is unwilling to state  
14 | whether or not he committed misrepresentations. There are no  
15 | admissions apart by him on that -- in that respect. So, RKO  
16 | certainly is not relevant. Now, what's your next case?

17 | MR. BORKOWSKI: Well, Your Honor, if I may be per-  
18 | mitted to characterize the exception, which I still have not  
19 | done, in the dicta in RKO and in ASD Answering and in George  
20 | E. Cameron in the language resolving each of the matters at  
21 | the places that I cited, the generally recognized exception to  
22 | Toltin Broadcasting is that settlement that includes grant and  
23 | transfer of a license is acceptable when character issues are  
24 | pending if the settlement includes a large monetary penalty.

25 | JUDGE CHACHKIN: Now, does this involve transfer of

1 | licenses, this case? Is there any proposal here that the  
2 | licensee is going to get out of the field and transfer his  
3 | licenses?

4 |           MR. BORKOWSKI: This, this -- yes. The licensee  
5 | proposes --

6 |           JUDGE CHACHKIN: No, I'm not talking about the  
7 | application. I'm talking about his licenses. RKO involved  
8 | all the licenses of RKO. Now, the applicant, as I read the  
9 | consent order, is not preparing to turn in all his licenses or  
10 | transfer his licenses, is he?

11 |           MR. BORKOWSKI: Your Honor, I'm not intimately  
12 | familiar with RKO, but I -- as I recall, from what little I  
13 | know, the death penalty was not completely applied in that  
14 | case, was it, sir?

15 |           JUDGE CHACHKIN: Pardon me?

16 |           MR. BORKOWSKI: Was RKO required to surrender every  
17 | one of its licenses?

18 |           JUDGE CHACHKIN: RKO did get out -- did, did agree  
19 | to transfer all of its licenses, yes. That was the deal.

20 |           MR. BORKOWSKI: In this instance, the -- Capitol  
21 | Communications, Incorporated, has agreed to completely get out  
22 | of the private carrier paging business.

23 |           JUDGE CHACHKIN: That's, that's not what I -- that's  
24 | not the point. The issues concern whether or not Capitol is,  
25 | is -- has the basic qualifications, and he has apparently a



1 number of licenses here. And notwithstanding your joint  
2 agreement -- joint proposal to delete the issues, quote,  
3 unquote, I denied that.

4 MR. BORKOWSKI: I'm aware of that, Your Honor.

5 JUDGE CHACHKIN: And, therefore, all we have is a  
6 pending application. And the fact that he intends not to go  
7 ahead with his pending application, I don't see how that has  
8 anything to do -- he can dismiss his application, but that  
9 doesn't change the fact that we have all these other licenses  
10 to deal with and whether he -- they possess the basic qualifi-  
11 cations to remain a licensee.

12 MR. BORKOWSKI: I would have to research further  
13 whether in ASD, George E. Cameron, and RKO the death penalty  
14 was applied in each case and surrender of all licenses was  
15 required, but, in my opinion, having reviewed the cases --

16 JUDGE CHACHKIN: I wish you wouldn't say death  
17 penalty. As far as I know, this is not a criminal case.

18 MR. BORKOWSKI: I'm, I'm sorry, Your Honor. I'm  
19 using it metaphorically. I apologize. What, what I meant was  
20 I am not certain that in each of those three cases surrender  
21 of all the licenses wa-- were required. I, I am aware of  
22 instances where settlements have occurred, such as in graphic  
23 scanning, where licenses were retained. I --

24 JUDGE CHACHKIN: But that also was a hearing, was it  
25 not, in which all the -- of which an -- which an ID was

1 issued?

2 MR. BORKOWSKI: I'm not sure, Your Honor.

3 JUDGE CHACHKIN: Didn't I just quote you specifi-  
4 cally from ASD, which the Commission in that case specifically  
5 said although the -- there was a proposal pending before the  
6 Commission, that the Commission should resolve it by some kind  
7 of -- the general counsel --

8 MR. BORKOWSKI: But ultimately in, in --

9 JUDGE CHACHKIN: The point of the matter is there  
10 was a hearing held. Evidence was taken. There was an initial  
11 decision and the Commission reviewed the initial decision.  
12 Therefore, they were in a position to determine what, what  
13 the, what the determination should be, what, what was justi-  
14 fied on the basis of the evidence.

15 You're asking me to grant the consent order where I  
16 have all these serious issues here. No evidence has been  
17 taken. We have no admissions or agreements, no determinations  
18 on the misrepresentation issue and the lack of candor issues.  
19 That's completely different than what happened in ASD.

20 The hear-- the two cases you cited, RKO and ASD,  
21 there was a full hearing held. Decisions were made and the  
22 Commission was able to make a determination based on the  
23 evidence which had been taken. Then, of course, the  
24 Commission could determine how it wants to resolve the case,  
25 whether it wants to permit transfers or whether it wants to

1 permit denial of one application and, and allowing to rema--  
2 to keep the other applications.

3 But here we don't have that situation since there  
4 has been no evidence taken. I don't know how severe it is. I  
5 don't know if there's a basis. I don't know what action is,  
6 is -- should be undertaken here. You're asking me to grant a  
7 consent order, allow the licensee to keep all these licenses  
8 notwithstanding the serious issues the Commission has raised.

9 MR. BORKOWSKI: All, all I can do, Your Honor, with  
10 respect to that is point out to you that in three Private  
11 Radio Bureau cases that have been before Administrative Law  
12 Judges here, in the Air and Ambulant case, the Robert King  
13 case, and the Jerry Gastol case without hearings consent  
14 decrees were approved where there was a designation of a  
15 general character qualification issue. And I would cite that  
16 as precedent for the proposition that that can occur.

17 JUDGE CHACHKIN: Well, all I could say is my reading  
18 of the case and my reading of ASD and Toltin indicates to me  
19 that a consent decree cannot be granted in this case, a con-  
20 sent order cannot be granted in this case, and that a hearing  
21 is necessary, and I propose to reject this agreement. If you  
22 want to, if you want to submit a brief, I certainly will look  
23 at it. But based on what you've told me here today, we're  
24 going to have a hearing and we're going to resolve these  
25 issues and we're going to have discovery.

1 MR. BORKOWSKI: Would Your Honor permit us to file  
2 such a brief?

3 JUDGE CHACHKIN: You could file a brief and -- but  
4 what I would like you to do is cite me a Commission case, not  
5 a judge case. I'm not interested in whether an ALJ granted  
6 it. That doesn't concern me. I'm interested in whether the  
7 Commission reviewed it and approved it in a situation like  
8 this where no evidence has been taken and no hearing has been  
9 held. And I'm unaware of that. At least, my research at Pike  
10 and Fisher didn't reveal to me any instances where the  
11 Commission has ever found favor with any such settlement. The  
12 fact that the Commission in every case didn't on its own  
13 motion decide to review the cases is of no materi-- is not of  
14 no consequence. In those cases where it did, it made clear  
15 what it meant -- what Section 1.93 meant and how it was to be  
16 interpreted. So, I, I --

17 Next order of business, then, is to proceed with  
18 discovery. Now, apparently the Parties did get together and  
19 did discuss discovery and a schedule conducting discovery.  
20 What did the Parties agree to? Mr. Hardman?

21 MR. HARDMAN: Well, we -- Your Honor, we agreed to a  
22 schedule of discovery which contemplated the first deadline  
23 was the 27th, which was this last Wednesday, for the, for the  
24 Government and Capitol to submit its first round of interroga-  
25 tories and the Request for Production of Documents and also to

1 respond to the -- to RAM's interrog-- first round of interrog-  
2 atories and Request for Production of Documents. But when --

3 JUDGE CHACHKIN: And also admissions. RAM has also  
4 filed admissions, has it not?

5 MR. HARDMAN: RAM and the Government have filed --

6 JUDGE CHACHKIN: And the Government?

7 MR. HARDMAN: -- admissions. Yes.

8 JUDGE CHACHKIN: Was there any agreement as to when  
9 you would respond to the ones already filed against you?

10 MR. HARDMAN: Well, originally, the agreement was to  
11 respond by the 27th. But when the settlement agreement was  
12 subsequently reached, we agreed to stand down on that and to  
13 revisit the, the schedule if necessary after the Prehearing  
14 Conference.

15 JUDGE CHACHKIN: Well, it is necessary because --

16 MR. HARDMAN: I, I understand that.

17 JUDGE CHACHKIN: Anyone else have anything to con-  
18 tribute to this discussion?

19 MR. JOYCE: Our schedule, I believe, is still pretty  
20 much on track, Your Honor, for your pre-- for the hearing  
21 deadline in this case.

22 JUDGE CHACHKIN: What, what it -- what do you mean  
23 it's still on track?

24 MR. JOYCE: We had established dates that would  
25 complete discovery by middle of December.

1 JUDGE CHACHKIN: Middle of December?

2 MR. JOYCE: Yes.

3 JUDGE CHACHKIN: Did the Parties have any discussion  
4 as to a hearing date?

5 MR. JOYCE: We've assumed that we'd be prepared for  
6 the date that was scheduled in the Commission's Order.

7 JUDGE CHACHKIN: Is that the view of all Parties, to  
8 go ahead on the date in the Commission's Order?

9 MR. HARDMAN: Well, in, in light of the developments  
10 this morning and a need to revisit the, the schedule for, for  
11 compliance, I think that would be, I think that would be  
12 compressing discovery unreasonably.

13 JUDGE CHACHKIN: Well, what dates do you have in  
14 mind, Mr. Hardman?

15 MR. HARDMAN: Well, I would, I would suggest the --  
16 to defer the hearing for -- what is, is close to a month.

17 JUDGE CHACHKIN: February?

18 MR. HARDMAN: Yes. Early --

19 JUDGE CHACHKIN: Early February?

20 MR. HARDMAN: Early February.

21 JUDGE CHACHKIN: Anyone have any objections to that?

22 MR. BORKOWSKI: No, Your Honor, although we feel  
23 equally as well that we could be prepared on the January 4th  
24 date if absolutely necessary, but we have no objection to a  
25 February date.

1 MR. JOYCE: Counsel for Ram has no objection.

2 JUDGE CHACHKIN: All right. Let's make it, then,  
3 February 1st, which is a Monday.

4 Now, as far as discovery, the original date was to  
5 complete it by the middle of December. Apparently, you want  
6 more time than that, Mr. Hardman?

7 MR. HARDMAN: That's correct, Your Honor. If we  
8 could slip that by to the middle of January?

9 JUDGE CHACHKIN: Well, the middle of January will be  
10 close to the hearing date. We were talking about before the  
11 middle of December. I think it might -- more, more appro-  
12 priate, perhaps, to use the original hearing date as the --

13 MR. HARDMAN: All right.

14 JUDGE CHACHKIN: -- completion of discovery, January  
15 4th. Now, as far as -- now, we're sa-- we're saying January  
16 4th completion of discovery. What, what does this mean in  
17 terms of responding to interrogatories, production of docu-  
18 ments, admissions?

19 MR. HARDMAN: Well, it --

20 JUDGE CHACHKIN: Are we using the time specified in  
21 the Rules or are we -- the Parties have come up with some kind  
22 of stipulation on that?

23 MR. HARDMAN: If, if Your Honor would permit, after  
24 the Prehearing Conference we can adjourn and work back and,  
25 and come up with a schedule. I -- in light of our previous

1 meeting, I don't anticipate any difficulty stipulating to  
2 deadlines and, and so forth for, for depositions and, and that  
3 sort of thing.

4 MR. JOYCE: We -- to answer your question, Your  
5 Honor, we had stipulated to a schedule to deadlines for each  
6 of those discovery items, including depositions.

7 JUDGE CHACHKIN: Including depositions?

8 MR. JOYCE: Yes.

9 JUDGE CHACHKIN: The Parties plan on taking  
10 depositions?

11 MR. JOYCE: Yes, Your Honor.

12 JUDGE CHACHKIN: All right. Well, I'll leave it for  
13 the Parties to work out some stipulated procedures with the  
14 understanding that discovery is to be completed by January  
15 4th. And when the Parties have worked out some stipulations,  
16 I'd appreciate a copy of the dates agreed to by the Parties.

17 MR. JOYCE: Yes, Your Honor.

18 JUDGE CHACHKIN: Is there anything, Mr. Hardman, you  
19 want to discuss, any clarification necessary concerning the  
20 issues the Commission designated?

21 MR. HARDMAN: Well, Your Honor, I still have not  
22 received a copy of the Order you issued on the Motion to  
23 Enlarge or to, to revise the issues. I do -- I mean, I've  
24 been provided a copy of it, so I, I am --

25 JUDGE CHACHKIN: Oh, you do have a copy of it? Yes?



1 MR. HARDMAN: -- familiar with it. Yeah. But that,  
2 that was yesterday when I found out about it. I'm going to  
3 have to take a look at the -- you know, what, what avenues I  
4 still have available on that in light of the ruling. I sus-  
5 pect that at least Capitol will ask for reconsideration based  
6 on --

7 JUDGE CHACHKIN: Reconsideration before whom?

8 MR. HARDMAN: Reconsideration by Your Honor.

9 JUDGE CHACHKIN: On what basis?

10 MR. HARDMAN: Well --

11 JUDGE CHACHKIN: The, the Rules do not permit  
12 reconsideration. On what basis do you have to ask for recon-  
13 sideration? I thought --

14 MR. HARDMAN: Well, there are a couple of bases.  
15 One, the -- in, in the Order, the, the Judge states that the  
16 Parties do not contest the basis for the action taken by the  
17 Commission, which I would submit is not correct. Because if  
18 in fact the Petition for Reconsideration had been dismissed as  
19 we contend, the license would have vested and the appropriate  
20 course of action for the Commission to take is to move the  
21 matter into the revocation part of the case rather than merely  
22 set aside its grant of a license. So, that's certainly con-  
23 testing the basis --

24 JUDGE CHACHKIN: No, no. You're missing my whole  
25 point. That's not what I said. I said here -- what I said